

Before the
Federal Communications Commission
Washington, D.C. 20445

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| In the Matter of |) | |
| |) | |
| Amendment of the Commission's Part 90 Rules |) | WT Docket No. 06- |
| 49 | | |
| In the 904-909.75 and 919.75-928 MHz Bands |) | |

OPPOSITION TO REQUEST TO EXTEND PLEADING CYCLE

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May 25, 2006

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OPPOSITION OF PROGENY

Progeny LMS, LLC (“Progeny”) hereby opposes the request submitted by Telesaurus Holdings GB LLC (“Telesaurus” or “Havens”) to extend the pleading cycle in the above-captioned Notice of Proposed Rulemaking (“NPRM.”)¹ The NPRM opens a re-evaluation of the Commission’s Part 90 rules regarding the 904-909.75 MHz and 919.75-928 MHz bands. In a request for “expedited action,” Telesaurus seeks a one-month extension of the comment due date from May 30, 2006, until July 3, 2006, and a two-week delay in the reply comment deadline, from June 30, 2006, until August 17, 2006.² The Commission set the current comment dates on March 7, providing more than ample notice of 12 weeks to all parties. Thus, Progeny believes the Commission has provided adequate time for interested parties to contribute to a full record in this proceeding. Rather than filing an extension request in a timely manner, Telesaurus waited just four business days prior to the comment deadline to seek additional time in the pleading cycle.

¹ *Amendment of the Commission’s Part 90 Rules in the 904-909.75 and 919.75-928 MHz bands* (NPRM), Notice of Proposed Rulemaking, WT Docket 06-49, Rel. March 7, 2006.

² *Amendment of the Commission’s Part 90 Rules in the 904-909.75 and 919.75-928 MHz bands*, WT Docket 06-49, Request to Extend Pleading Cycle, Regarding Notice of Proposed Rulemaking, filed by Telesaurus Holdings GB LLC, May 23, 2006 (“Telesaurus Request”).

Instead of submitting a serious, justified request for an extension of time, Telesaurus's request is nothing more than an attempt to game the system.³

Telesaurus spells out at length its opposition to the NPRM by calling it “highly objectionable, damaging, unfair and anticompetitive.” The instant extension request merely marks another attempt of Warren C. Havens, who is the majority interest holder in Telesaurus, to divert the resources of the Commission from where they are best spent, which is on consideration of the core spectrum policy issues at the center of this NPRM regarding the Multilateration-Location and Monitoring Service.

I. Havens Presents No Compelling Reason for an Extension of Time

Havens fails to present a compelling reason that would warrant the Commission extending this twelve-week comment period by another month and the reply comment period by two weeks. The Commission's policy makes clear that “extensions of time shall not be routinely granted.”⁴ Clearly, the pleading cycle established by the FCC provided Havens adequate time to file an 18-page comment deadline extension request that lays out wide-ranging views on the NPRM, which Havens contended lacked “depth and practical meaning” in its treatment of wireless location technology.⁵ Havens asserts, among other factors, the “complex” nature of this proceeding and

³ The request raises objections to the NPRM and lodges attacks on Progeny, without raising a single allegation that could not have been made weeks ago rather than on the brink of the comment deadline.

⁴ 47 C.F.R. § 1.46.

⁵ *Telesaurus Request*, page 7, footnote 12.

Telesaurus's commitment of resources to participate in "dozens" of Commission proceedings related to its portfolio of spectrum investments, such as pleadings related to Auction No. 65. Many other parties who plan to comment in this proceeding face a similar range of regulatory obligations that compete for their attention and already may have diverted valuable resources in the expectation that this filing date would remain intact. Moreover, interested parties have been apprised of the pleading cycle for this NPRM since March 7 and none, other than Havens, has sought an extension of time.

Havens also does not offer specific details on what information it could provide with a four-week extension of the comment deadline that it could not offer in a timely way in the existing pleading cycle. For example, Havens alludes to the need for additional time "to complete technical and market studies...that are important to the complex issues raised."⁶ He does not specify the "complex" issues to which he is referring. He also does not stipulate what these technical and market studies are, how they would contribute to the development of issues raised in the NPRM, how long they have been ongoing or when they would be completed.

Most importantly, while Havens offers ample detail on his claimed resource constraints for responding in a timely manner to the questions raised in the NPRM, he does not describe the public interest benefits that would flow from a delay in this proceeding moving forward under the

⁶ *Telesaurus Request*, page 5.

comment deadlines laid out by the Commission.

II. Havens's Extension Request Runs Counter to General Commission Policy

The Commission's general policy is not to routinely grant extensions of time.⁷ When the Commission does grant extensions for submitting comments in pleading cycles, it is typically in response to a demonstration by petitioners as to why the additional time is necessary and what specific information would be forthcoming as a result of the extension. The Commission has based extensions of time for comment cycles in the proceedings cited by Havens and in many other dockets on evidence of the specific public policy goals that would be advanced, including technical information.⁸ Havens does not provide anything close to a similar level of detail on the activities that he would undertake during the extend period of time to achieve similar public benefits that warrant a delay.

As but one of many examples, in an *Order Granting Extension of Time* in the proceeding regarding Carrier Current Systems, including Broadband over Power Line (BPL) Systems, the FCC granted a limited period of

⁷ 47 C.F.R. § 1.46

⁸ *Telesaurus Request*, Attachment 2. In the proceedings cited by Havens in which the Commission has granted an extension of the comment or response periods, each original request was submitted with more advance time for the Commission to make a judgment than Havens has allowed in the instant proceeding. In one example cited by Havens, the extension request was filed 51 days before the comment deadline and in five out of eight proceedings, at least three weeks' notice was provided.

additional time for comments and replies at the request of the National Antenna Consortium and the Amherst Alliance (NAC/Amherst)⁹. The extended pleading cycle was based on the impending release of the second part of a study of BPL systems by the National Telecommunications and Information Administration (NTIA). The FCC concluded that a limited extension of time was warranted “in light of the potential utility of the NTIA submission and our interest in receiving public comment on that study.” However, the Commission rejected a request by NAC/Amherst for an even longer extension, noting that “no specific justification” was presented. The *Order* stated that a longer extension would “needlessly increase regulatory uncertainty about this technology’s promise to deliver broadband services to American consumers.” Havens also fails to offer a specific justification in the instant extension request, which would create further regulatory uncertainty for M-LMS licensees.

In yet other cases, the Commission has granted limited extensions of time when there is agreement among the parties in the proceeding that additional time is needed.¹⁰

⁹ Carrier Current Systems, including Broadband Over Power Line Systems and Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems (ET Docket Nos. 03-104 and 04-37, respectively), *Order Granting Extension of Time*, released May 27, 2004.

¹⁰ Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act of 1934, as Amended, WC Docket No. 06-54, *Public Notice*, released March 21, 2006. The Wireline Competition Bureau granted a request by COMPTel for a two-week extension to file comments on the

III. Havens Puts Forward Claims Unrelated to the Comment Period

Havens raises issues of concern regarding the NPRM, such as contentions regarding the Administrative Procedures Act, that are not germane to the request for an extended comment period. Telesaurus fails to make clear how an additional four weeks for comment could cure the fundamental, broader concerns that Havens outlines, including the extent to which the suggested changes would be an “unconstitutional taking.”¹¹ To the extent to which Havens plans to address these alleged procedural and/or Constitutional issues with regard to this proceeding, nothing in the present pleading cycle would foreclose his options for raising these in the proper venues outside of this docket.

IV. Conclusion

The Commission wisely proposes a wide range of potential flexibility changes for this band that would advance M-LMS service offerings while protecting the hierarchy of other existing users in this band, including users of Part 15 devices and federal users. The NPRM provided 12 weeks from the date of the Commission’s release for commenters to develop comments for submission in this pleading cycle. Given the scope of potentially affected parties, it is not in the public interest for the Commission to delay this

petition of Time Warner Cable (TWC) for preemption of the South Carolina Public Service Commission’s decision to deny TWC a certificate of public convenience and necessity. The South Carolina Coalition also sought an extension and TWC did not object to the proposal.

¹¹ *Telesaurus Request*, page 12, footnote 20.

proceeding on the basis of Havens's claimed resource limitations to respond to this comment cycle in a timely manner.

We respectfully ask the Commission to reject this request for additional time for comments to be filed in response to the NPRM barring a demonstration that a wider range of parties would benefit from the extended pleading cycle.

Respectfully,

/s/ Janice Obuchowski
Of Counsel
Progeny LMS, LLC

May 25, 2006

Certificate of Service

I, Mary Greczyn, hereby certify that I have, on this 25th day of May 2006, e-mailed a copy of the foregoing *Opposition to Request to Extend Pleading Cycle* to the following:

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345

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